

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-300-C

In Re:)	
Application of LMK Communications,)	
LLC for a Certificate of Public)	SETTLEMENT AGREEMENT
Convenience and Necessity to Provide)	
Interexchange and Local Exchange)	
Telecommunications Services and for)	
Local Service Offerings)	

This Settlement Agreement (“Settlement Agreement”) is made by and among the Office of Regulatory Staff (“ORS”) and LMK Communications LLC. (“LMK” or “the Company”) (collectively referred to as the “Parties” or sometimes individually as “Party”);

WHEREAS, on July 22, 2009, LMK filed its Application requesting (i) a Certificate of Public Convenience and Necessity be granted authorizing LMK to provide resold and facilities based local exchange and interexchange telecommunications services throughout the State of South Carolina, pursuant to S.C. Code Ann. §58-9-280(B), as amended, 26 S.C. Reg. 103-823 and Section 253 of the Telecommunications Act of 1996; (ii) flexible regulation of its local exchange services, consistent with Order No. 98-165 in Docket No. 97-467-C; (iii) alternative regulation of its interexchange services, consistent with Order Nos. 95-1734 and 96-55 in Docket 95-661-C as modified by Order No. 2001-997 in Docket No, 200-407-C; (iv) for waiver of certain Commission Regulations, specifically Regulation 103-610 regarding location of records, Regulation 103-631 regarding publication of directories, and Regulation 103-612.2.3 regarding publication of operating maps and (v) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts (“USOA”);

WHEREAS on July 30, 2009, the Commission issued a Notice of Filing and Hearing and established a return date of August 31, 2009, for the filing of letters of protest or petitions to intervene and established a hearing date of October 26, 2009, for the application to be heard before hearing examiner David Butler, Esquire;

WHEREAS, on September 11, 2009, the Company filed the direct testimony of Jennifer Menge with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by LMK and its requests (i) for a Certificate of Public Convenience and Necessity to provide resold and facilities based local exchange and interexchange telecommunications services within the State of South Carolina; (ii) for flexible regulation of its local exchange services and alternative regulation of its interexchange services (iii) waiver of certain regulations of the Public Service Commission of South Carolina (“Commission”), specifically Regulations 103-610, 103-631, 103-612.2.3; and (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts (“USOA”);

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of LMK to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application and the financial data provided by LMK, and ORS has calculated certain performance ratios based upon information provided by LMK;

WHEREAS, ORS has investigated the services to be offered by LMK and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by LMK;

WHEREAS, as a result of its investigations, ORS has determined (a) LMK intends to offer resold and facilities based local and interexchange services; (b) the officers of LMK

possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, LMK appears to have access to sufficient financial resources necessary to provide the services proposed in its application; (d) LMK's proposed tariffs with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (e) the provision of services by LMK will not adversely impact the availability of affordable telecommunications services; (f) to the extent it is required to do so by the Commission, LMK will participate in the support of universally available telephone service at affordable rates; and (g) interexchange services by LMK will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the filed testimony of the Company's witness Jennifer Menge without cross-examination by ORS.

2) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2008) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in Raleigh, North Carolina and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2008) or § 58-9-1070 (Supp. 2008). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

3) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (“USOA”). The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2008) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission’s jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund (“USF”), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs as but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required

by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

4) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-631 regarding the publication of directories. Because the Company has agreed to make arrangements for publication of its customer's listings, ORS does not oppose the requested waiver.

5) Given the Company's request to provide statewide service, ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-612.2.3 which requires the filing of operating maps. However, should the Company establish local exchange service areas which differ from those of the incumbent local exchange carriers, the Company agrees it will notify the Commission and ORS of the change and file updated service maps;

6) ORS does not oppose LMK's requests for flexible regulation of its local exchange services and alternative regulation of its interexchange service offerings consistent with the procedures described and set forth in Order No. 98-165 in Docket No. 97-467-C and Orders 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C. Flexible regulation includes (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days. Alternative regulation of interexchange services provides for the (i) regulation of these services in the same manner as these services are regulated of AT&T Communications of the Southern States, Inc., (ii) removal of the maximum rate tariff requirements for LMK's business services, private line, and customer network-type offerings, except in instances governed by Order No. 2001-997 which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (iii)

presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iv) the same regulatory treatment as AT&T Communications of the Southern States, Inc. in connection with any future relaxation of reporting requirements;

7) LMK agrees to resell the services only of those local exchange providers or interexchange carriers authorized to do business in South Carolina by the Commission;

8) LMK agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

9) LMK agrees to file necessary financial information as directed by the Commission or ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as LMK. The Parties agree that such reports shall be filed pursuant to ORS' instructions and monies shall be remitted in accordance with the directions of the ORS and/or the Commission.

10) LMK agrees to maintain its books and records in a manner that would permit ORS to examine any of LMK's reports filed with the Commission and provided to ORS.

11) LMK agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order.

12) In the event that LMK offers prepaid calling card services in the future, LMK agrees that it shall obtain Commission approval and post a surety bond in the amount of \$5,000 as required by the Commission;

13) LMK agrees to comply with South Carolina Regulation 103-607 in that they will obtain a bond, irrevocable letter of credit, or certificate of deposit per the Commission's request if LMK provides pre-paid local exchange services.

14) LMK agrees to comply with the verification regulations governing change of preferred carriers as established by the Federal Communications Commission ("FCC"). LMK agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 95-658;

15) LMK agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, LMK agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, LMK shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

16) To the extent necessary, LMK agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

17) LMK agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," also known as 911 services." LMK agrees to contact the appropriate authorities regarding 911 services in the counties and cities where LMK will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding LMK's operations.

18) LMK agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

19) LMK agrees to file a final revised tariff with both the ORS and the Commission within 30 days of the Commission's order granting LMK's application and the revised tariff shall reflect and be in accordance with ORS' recommendations.

20) "Company" shall file its revised tariff within thirty (30) days of receipt of this Order utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

21) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

22) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

23) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation.

24) This Settlement Agreement shall be interpreted according to South Carolina law.

25) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party.

26) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that

his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

Representing the Office of Regulatory Staff

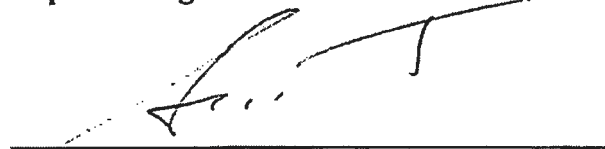


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10-19-2009
Date

WE AGREE:

Representing LMK Communications, LLC.



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Date

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**CERTIFICATE OF
SERVICE**

This is to certify that I, Chrystal L. Morgan, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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Elliott & Elliott, P.A.
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Columbia, SC, 29205

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
Sue-Ann Gerald Shannon, Esquire
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Chrystal L. Morgan

October 19, 2009
Columbia, South Carolina